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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,118	09/21/2001	Steven R. Pearson	BEA920010027US1	5751

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EXAMINER
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FILIPCZYK, MARCIN R

ART UNIT	PAPER NUMBER
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2161

DATE MAILED: 05/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/960,118

Applicant(s)

PEARSON, STEVEN R.

Examiner

Marc R Filipczyk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: 4/6/05.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Response to Amendment***

This action is responsive to Applicant's response filed on April 18, 2005 in which claims 1-14 are pending. The change of address of 9/2/04 has been noted.

The finality of Office Action mailed by the Examiner on January 18, 2005 is withdrawn and in agreement with the Applicant is treated as a Non-final Rejection.

**To expedite the process of examination Examiner requests that all future correspondences in regard to overcoming prior art rejections or other issues (e.g. amendments, 35 U.S.C. 112, objections and the like) set forth by the Examiner that Applicants provide and link to the most specific page and line numbers of the disclosure where the best support is found (see 35 U.S.C. 132).**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 6 and 9, the segment, "organizing" is indefinite. It is not clear what steps in the body of the claim organize data items. Second, the feature of, (claims 1 and 9) "switching from said first input stream to said second input stream" and (claim 6) "switching from said first input stream to said second input" are indefinite. It is not clear what switching takes place and what data items are organized.

Further regarding claims 1 and 9, the amended feature of "quantity of said input streams is an odd number" is indefinite. It is not definite because the preamble teaches two or more input

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streams but the body supports odd numbers, and 1 being an odd number but less than two is contradictory to the amount of input streams required in the claim.

Regarding claim 4, the segment, "the step of alternating" is indefinite. It is not clear what alternating step is referred to.

Claims 2-5, 7, 8 and 10-14 depend from claims 1, 6 and 9 respectively, thus they are rejected on the same merit.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Or,

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1 and 9 are rejected under 35 U.S.C. 102(b) as best as Examiner is able to ascertain as being anticipated by Smith (U.S. Patent No. 5,832,068).**

Regarding claims 1 and 9, Smith discloses a method for organizing data items from two or more input streams comprising: (fig. 1, items 10 and 12 col. 1, lines 19-24)

assigning a status identifier to each input stream, said identifier reflecting a state of an input stream; (fig. 3, 104)

comparing a status identifier of a first input stream with a status identifier of a second input stream; (fig. 3, 106)

identifying a data item being processed from a second input stream as being a duplicate of a previously processed data item from a first input stream based on said assigned duplicate data item; (fig. 3, items 106 and 108)

switching from said first input stream to said second input stream based on said duplicate identifier (fig. 4, items 208, 210 and 212).

**Claims 1, 5, 6, 9 and 13 are rejected under 35 U.S.C. 102(a) as being anticipated by Applicant's Admitted Prior Art (AAPA).**

Regarding claim 6, AAPA discloses a method for organizing data items from two or more input streams comprising the steps of: (p.1, par. 5, lines 2 and 3)

identifying a data item being processed from one of the input streams as being a duplicate of a previously processed data item; (p.1, par. 6, line 6)

retaining an indication that the data item being processed is a duplicate data item; (p.1, par. 6, lines 6 and 7; *-1,0,1 where 0 is equal or a duplicate*) and

switching from said first input stream to said second input stream based on said duplicate identifier (p.1 par 6, lines 3-6 and par 7, line 2; *merging*).

(Note: for equal or duplicate key values after the key comparison the swap can be omitted)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2-4, 7, 8, 10-12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (U.S. Patent No. 5,832,068) in view of AAPA.**

Regarding claims 2-4, 7, 8, 10-12 and 14, Smith discloses all of the claimed subject matter as discussed above including a status identifier corresponding to duplicate data item; (fig. 3, items 106 and 108), but does not expressly teach a value corresponding to “empty”, “duplicate”, “merging” or “done”. Examiner states that assigning value identifiers for specific comparisons is a common practice in computer programming. For instance, AAPA teaches an ordered merging replacement selection wherein each node of a tree stores information about a “loser” of a prior sort key comparison among its children. AAPA further teaches the status identifier has a value corresponding to duplicate keys (p.1, par. 6, lines 6 and 7; *-1,0,1 where 0 is done or a duplicate*).

Hence, it would have been obvious to a person of ordinary skill in the art having Smith’s indicator along with AAPA at the time the invention was made to modify Smith’s indicator in view of AAPA so that the unique integer values would indicate a specific task (e.g. value two for merging) because Smith’s data record exclusion indicator includes a generated unique data record identifier (col. 3, lines 27-29, Smith) and AAPA teaches the steps of the ordered merging by replacement, thus the modification would be simple having both arts at hand. One would have been motivated to combine Smith and AAPA to process data faster and more efficiently.

***Response to Arguments***

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Applicant's arguments filed April 18, 2005 have been fully considered but they are not persuasive. The arguments and responses are listed below. Note, Applicant herein refers to the Applicant's representative, Rochelle Lieberman.

On pages 6 and 7 of the 4/18/05 response, the Applicant summarized prior interviews of record.

The following is Examiner's version of the interviews.

I. and II. In a telephonic interview on 3/15/2005, Examiner explained to the Applicant that the amended claims had triggered a 35 U.S.C. 101 rejection. Upon further discussion, Applicant proceeded on arguing that a 35 U.S.C. 101 issue was present in the original set of claims and requested an opportunity to respond to such rejection. Supervisor Metjahic and Examiner on 3/17/2005 determined to withdraw the finality of Office Action mailed 1/18/2005.

III. On 4/6/2005, Examiner, Primary Examiner Coby and Applicant conducted an in person interview. Examiner and Primary Coby discussed a proposed amendment and Applicant was advised to further amend the claims and clarify the claimed invention, specifically, Examiner explained to provide support for the preamble of organizing data items in the body of the claim and to elaborate on the alternating aspect of the invention and its utility. Finally, Examiner suggested as a courtesy that the present claims needed to be amended to avoid a final rejection using the same prior art.

On pages 9 and 10 of the 4/18/05 response, the Applicant argues that AAPA fails to illustrate an equitable solution for managing input streams containing duplicate data items, and that AAPA does not alternate data between input streams as taught by Applicant.

Examiner disagrees. AAPA clearly illustrates managing input streams comprising switching (see fig. 5A, AAPA) and further teaches duplicate data items (p.3, lines 1-5).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., alternating) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

On pages 10 and 11 of the 4/18/05 response, the Applicant argues that Smith fails to show instructions for alternating between input streams in response to identifying a duplicate record as presented.

Examiner disagrees. However, the Applicant has amended the claims and no longer claims alternating in the pending claims. As such, the argument is believed to be moot. See rejections above for the amended pending claims 1-14.

On page 12 of the 4/18/05 response, the Applicant argues that AAPA and Smith patent do not teach the four integer options as claimed.

Examiner disagrees. Smith and AAPA teach the status identifier has a value corresponding to empty, duplicate, merging and done (p.1, par. 6, lines 6 and 7; -1,0,1 where 0 is



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*done or a duplicate, AAPA*). Note, it is a common practice in computer programming to assign value identifiers for specific tasks. According to the claims and specification, each value corresponds to a unique identifier, and it is notoriously well known in computer programming to assign unique identifiers for empty, duplicate, merging, done, equal, etc. For more information please see rejection.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc R Filipczyk whose telephone number is (571) 272-4019. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on (571) 272-4023. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MF  
May 4, 2005

FRANTZ COBY  
PRIMARY EXAMINER

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